

Missouri Department of Natural Resource  
**Regulatory Impact Report**  
For  
Proposed Amendment 10 CSR 10-6.060

Division/Program Division of Environmental Quality/Air Pollution Control Program

Rule number 10 CSR 10 6.060 Rule title Construction Permits Required

Type of rule: Amendment

Nature of the rule: Prescribes Environmental Standards

Submitted by

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Program Director

Date

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Approval of the Completed Regulatory Impact Report

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Legal Counsel

Date

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Division Director

Date

Missouri Department of Natural Resource  
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Applicability: Pursuant to Section 640.015 RSMo, “all rulemakings that prescribe environmental conditions or standards promulgated by the Department of Natural Resources...shall... be based on the regulatory impact report...” This requirement shall not apply to emergency rulemakings pursuant to section 536.025 or to rules of other applicable federal agencies adopted by the Department “without variance.”

The Missouri Department of Natural Resources has determined this rulemaking prescribes environmental conditions or standards and verifies that this rulemaking is not a simple unvarying adoption of rules from other federal agencies. Accordingly, the Department has produced this regulatory impact report, which will be made publicly available for comment for a period of at least 60 days. Upon completion of the comment period, official responses will be developed and made available on the agency web page prior to filing the proposed rulemaking with the Secretary of State. Contact information is at the end of this regulatory impact report.

1. Describe the environmental conditions or standards being prescribed.

This rule proposes to adopt the provisions of the federal New Source Review (NSR) improvement final rule (published December 31, 2002) in nonattainment areas. The NSR rule changes are permit process changes and are intended to provide greater regulatory certainty, administrative flexibility and permit streamlining. This rulemaking would adopt the federal NSR rules to implement the following three methods in order to achieve these goals:

**Baseline Emissions Determination:** Currently, the baseline actual emissions of an existing emissions unit is determined by averaging the annual emissions rate (in tons per year) for the two previous years or another more representative period as determined by the permitting authority. The new rule codifies different methods for two different source categories: electric utility steam generating units (EUSGUs) and all other emission units. EUSGUs determine their baseline actual emissions by averaging the annual emissions rate for any two consecutive years in the past five years or another more representative period. All other units calculate an annual emissions rate using the emissions rates of any consecutive 24-month period during the 10-year period prior to the change.

**Actual-to-Future Actual Methodology:** Currently, in order to determine if a change to an existing unit triggers major NSR requirements, the baseline (pre-change) actual emissions of the unit are compared to the post-change potential to emit of that unit. This provision would allow baseline actual emissions to be compared to projected actual emissions from the unit following the change. The existing actual-to-potential method can still be used.

**Plantwide Applicability Limitations (PALs):** PALs are a voluntary, source-specific and pollutant-specific approach to determining whether major NSR is triggered by changes at

a source. The PAL is calculated by adding an operating margin equal to the significant amount for the PAL pollutant to the source-wide actual emissions of the PAL pollutant. Changes that do not result in emissions in excess of the PAL are not subject to major NSR. Sources must continue to apply major NSR applicability provisions to air pollutants for which they have no PAL. PALs can only be established through a process that includes an opportunity for public participation.

In order to ensure that Missouri's regulations are as stringent as the equivalent federal regulations, this rulemaking proposes to adopt rule language similar to the language in the equivalent federal regulation. In addition, the proposal includes the adoption of currently applicable state definitions in order to ensure that there are no changes to the air quality analysis provisions of the rule.

Following EPA's passing of the 2002 NSR reform regulation, Missouri adopted the NSR reforms by reference in attainment areas. This rulemaking became effective December 31, 2004. However, in June of 2005 the US Appeals Court for the Washington DC Circuit remanded several portions of this rulemaking back to EPA. Two major components of the NSR reforms that were included in Missouri's rule and that are now remanded are:

**Clean Units:** This provision is a major NSR applicability test. If an emission unit meets emissions limitations by utilizing emissions control technologies (add-on control devices, pollution prevention techniques or work practices) that are determined to be best available control technology (BACT) or lowest achievable emission rate (LAER) or equivalent to BACT or LAER, that unit can be designated a Clean Unit. Any physical or operational changes can be made to the Clean Unit without triggering major NSR, unless those changes cause the need for a revision in the emission limitations, work practices or physical or operational characteristics that formed the basis of the BACT/LAER determination or Clean Unit designation. Emissions units that qualify as Clean Units may use the Clean Unit applicability test for up to 10 years. The rule also allows emissions units to apply for Clean Unit status for control technologies installed in the past.

**Pollution Control Projects:** This provision excludes qualifying pollution control projects (PCPs) such as add-on control devices, material substitutions, work practices, and process changes from the definition of major modification, and therefore exempts them from major NSR. The rule includes a table of pre-approved exempt PCPs. Other PCPs may qualify, but the permitting authority must approve these on a case-by-case basis and the process must include an opportunity for public participation. PCPs may only be added to the list of exempt PCPs by the EPA through the notice and comment rulemaking process.

Therefore this rulemaking will amend Missouri's adoption by reference to remove the remanded portions of EPA's 2002 NSR reform rule. This rule will also make administrative changes to update the modeling method references, table title changes, and a clarification of the public notice period.

2. A report on the peer-reviewed scientific data used to commence the rulemaking process.

This amendment proposes to adopt the provisions of the federal NSR improvement final rule (published on December 31, 2002) in nonattainment areas. Attached is a copy of the NSR revisions.

3. A description of the persons who will most likely be affected by the proposed rule, including persons that will bear the costs of the proposed rule and persons that will benefit from the proposed rule.

This rule will affect any source that locates in Missouri or makes changes to their operation in Missouri that will require a construction permit under section (7) or section (8) of the construction permit rule. The department believes that this rule is air quality neutral. The rule is intended to provide greater flexibility in compliance with the standards for the facility. There is no anticipated cost associated with this rule amendment.

4. A description of the environmental and economic costs and benefits of the proposed rule.

This rule is not anticipated to have any environmental or economic cost. The rule provides alternative methods of complying with current standards so there will be the possibility for economic benefits at individual facilities.

5. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue.

It is not expected that this agency or any other public agency will incur additional costs to implement and enforce this proposed rule. The proposed rule will have no effect on State revenue.

6. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction, which includes both economic and environmental costs and benefits.

There is no difference in environmental cost or benefits when comparing this rulemaking to inaction. Economic costs to industry may be slightly lower because of the added flexibility in compliance that will be provided by this rulemaking.

7. A determination of whether there are less costly or less intrusive methods for achieving the proposed rule.

None known.

8. A description of any alternative method for achieving the purpose of the proposed rule that were seriously considered by the department and the reasons why they were rejected in favor of the proposed rule.

None known.

9. An analysis of both short-term and long-term consequences of the proposed rule.

Analyzing the short and long-term consequences of this proposed amendment, the affected sources will be allowed to comply with the requirements of NSR through several options that are currently unavailable. These options will allow affected sources to comply with less cost to the agency and to the sources themselves.

10. An explanation of the risks to human health, public welfare or the environment addressed by the proposed rule.

The department's Air Pollution Control Program is not aware of any risks to human health, public welfare, and /or the environment associated with this proposed rulemaking.

11. The identification of the sources of scientific information used in evaluating the risk and a summary of such information

Not applicable.

12. A description and impact statement of any uncertainties and assumptions made in conducting the analysis on the resulting risk estimate.

No uncertainties or assumptions were made in conducting the analysis for a risk estimate.

13. A description of any significant countervailing risks that may be caused by the proposed rule

None known.

14. The identification of at least one, if any, alternative regulatory approaches that will produce comparable human health, public welfare or environmental outcomes.

None known.

15. Provide information on how to provide comments on the Regulatory Impact Report during the 60-day period before the proposed rule is filed with the Secretary of State.

Formal comments can be provided on either the Regulatory Impact Report or the draft rule text by sending them to the contact listed below.

Questions and/or comments may be sent to:

Chief, Operations Section  
Missouri Department of Natural Resources Air Pollution Control Program

P.O. Box 176  
Jefferson City, MO 65102-0176

or

Missouri Air Conservation Commission  
P.O. Box 176  
Jefferson City, MO 65102-0176

or

call: (573) 751-4817.

16. Provide information on how to request a copy of comments or the web information where the comments will be located.

Copies of formal comments made on either the Regulatory Impact Report or the draft rule text may be obtained by request from the contact listed above or by accessing the Rules In Development section at Web site [www.dnr.mo.gov/alpd/apcp/homeapcp.htm](http://www.dnr.mo.gov/alpd/apcp/homeapcp.htm) for this particular rulemaking.